2009

Tiffany F. Curtis v. S. Steven Maese : Reply Brief

Utah Court of Appeals

Rebecca Skordas; Skordas, Caston & Hyde; Counsel for Appellee.
S. Steven Maese; Appellant pro se.

Case № 20090454-CA

In the Utah Court of Appeals

Tiffany F. Curtis,
Petitioner *and* Appellee,

-v-

S. Steven Maese,
Respondent *and* Appellant.

Reply Brief *of* Appellant

Appeal from a civil stalking injunction. This judgment was entered in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Anthony B. Quinn presiding.

Rebecca Skordas
Skordas, Caston, & Hyde
341 South Main Street, Suite 303
Salt Lake City, Utah 84111-2707
(801) 531-7444 Phone

Counsel for Appellee

S. Steven Maese
2575 East 4430 South
Holladay, Utah 84124
(801) 244-5868 Phone
(801) 618-3999 Fax

Appellant Pro Se

Case № 20090454-CA

In the Utah Court of Appeals

Tiffany F. Curtis,
Petitioner *and* Appellee,

-v-

S. Steven Maese,
Respondent *and* Appellant.

Reply Brief *of* Appellant

Appeal from a civil stalking injunction. This judgment was entered in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Anthony B. Quinn presiding.

REBECCA SKORDAS
SKORDAS, CASTON, & HYDE
341 SOUTH MAIN STREET, SUITE 303
SALT LAKE CITY, UTAH 84111-2707
(801) 531-7444 PHONE

Counsel for Appellee

S. STEVEN MAESE
2575 EAST 4430 SOUTH
HOLLADAY, UTAH 84124
(801) 244-5868 PHONE
(801) 618-3999 FAX

Appellant Pro Se

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

Case № 20090454-CA

In the Utah Court of Appeals

Tiffany F. Curtis,
Petitioner *and* Appellee,

-v-

S. Steven Maese,
Respondent *and* Appellant.

Reply Brief *of* Appellant

INTRODUCTION

Curtis fails to comply with the Rules of Appellate Procedure. Her brief begins with a statement of the case that is argumentative, continues with "facts" well outside the record, and ends with arguing unpresented issues.

The Court should disregard—if not strike—Curtis's brief for these failures.

RESPONSE TO APPELLEE'S STATEMENT OF FACTS

> *Those who rewrite history do probably believe with part of their minds that they are actually thrusting facts into the past.... They feel that their own version was what happened in the sight of God, and that one is justified in rearranging the records accordingly.*
>
> — George Orwell

Maese appeals the trial court's ruling that he was unentitled to a continuance. He contends that the trial court both abused its discretion and violated Rule 74(c). Facts unrelated to his counsel's withdrawal and the court's directives are window dressing.

Still, Curtis spends the bulk of her brief vilifying Maese. This is not a trial court and the panel is not a jury. Yet Curtis's brief invokes the old lawyer maxim, when the facts

are against you, argue the law. When the law is against you, argue the facts. When both the facts and law are against you, pound the table.

A. The Criminal Cases.

Curtis begins her statement of facts with a subheading titled "The Criminal Cases." That entire section points to cases outside the scope of *this* case's record. What the State alleged or failed to allege is immaterial to this case. Moreover, the State amended the information against Maese and accused him of two counts of Attempted Violation of the Private Investigator Act—charges that bolster Maese's claim that he was acting in an investigatory capacity. In any event, these are not facts from this record.

Also, facts with citations are misstated. Curtis claims that Maese hired a private investigator to "document any possible probation violations so that he could harass" Curtis.[1] The record fails to substantiate this "fact." It is fiction.

Curtis cannot relitigate this case in this forum; especially with immaterial or misstated facts and inflammatory words designed to cloud the Court's view of the law.

B. The Civil Stalking Injunction

Curtis fails to cite the record for her facts; the first three paragraphs of this subsection contain one citation—to two lines of transcript. This entire section is irrelevant to the issues before the court.

C. The Civil Stalking Injunction Hearing

Here, Curtis relitigates the underlying stalking injunction. Maese is not appealing the stalking injunction. Maese appeals the trial court's denial of his continuance and the

---

[1] Brief of Appellee at 3.

Rule 74(c) violation. This entire section relates to the stalking injunction itself and is immaterial to determining whether or not the trial court erred.

It is purely inflammatory and provocative.

D. Finding of Fact and Conclusions of Law

This section references a document which speaks for itself and is irrelevant to this issues presented on appeal.

E. Maese's Motion for a New Trial

Finally, Curtis addresses relevant facts. Yet she distorts these "facts." For example, Curtis states that "Ms. Skordas quoted an affidavit submitted on Maese's behalf by another attorney that indicated Maese knew Mr. Athay would not file the frivolous motions."[2] The actual transcript which Curtis quotes reads:

> Paragraph 9 then states, "On or about March 3rd I spoke with Mr. Athay and asked if he was prepared to proceed with the hearing on March 6th, even though he didn't have the discovery. Mr. Athay stated approximately 'What defense would now argue? I don't believe I can argue any defense to the injunction. I believe the injunction is moot because there's a no contact order.'"[3]

Mr. Athay believed a stalking injunction was moot where a no contact order in a criminal case is in place. The record reveals that at trial, Mr. Athay advanced this very argument. The trial court rejected this argument, with the following exchange:

> THE TRIAL COURT: Mr. Maese could simply stipulate to a 36-month civil stalking injunction, which doesn't put any additional burdens on him it seems to me. That would forego the need to have a hearing.
>
> MR. ATHAY: Judge, Mr. Maese and I had several discussions in that regard, and we are at a substantial disagreement. In fact, the law-

---

[2] Brief of Appellee at 12.

[3] R. at 349 (Tr. 10:4-10, May 5, 2009).

> yer/client relationship is literally broken down over these very issues.[4]

Maese saw that Mr. Athay had one defense, mootness. Maese asked Mr. Athay to prepare a more robust defense. Characterizing this request as "frivolous" is surreal. Moreover, this exchange shows that Maese was correct: Mr. Athay was unprepared. He had one arrow in his quiver and that arrow was unrelated to the merits.

* * *

Curtis fails to dispute any material facts set forth by Maese. And with the subtlety of a jackhammer, her statement of facts attempts to distract the Court by vilifying Maese. The message is clear: Sustain the trial court's ruling because Maese is a mean man. Yet the appeals process is designed to focus on the law, not passions.

ARGUMENT

POINT I. The trial court abused its discretion by denying Maese's motion for a continuance to obtain counsel.

The Parties agree that the *Longcrier*[5] test appropriately determines whether or not a trial court abused its discretion in denying a continuance. Below, Maese shows that Curtis's factual and legal interpretation regarding its implementation is flawed.

A. Maese did not request prior continuances. Curtis concedes the docket reflects this yet attempts to dispute that with her counsel's statements.

Curtis claims that "at least the continuance immediately prior to the stalking injunction hearing was at his counsel's urging and for his benefit. R. 331A: 4 (19-25)."[6] The transcript portion Curtis cites states:

---

[4] R. at 331A (Tr. 3:15-25, March 6, 2009).

[5] *Layton City v. Longcrier*, 943 P.2d 655 (Utah Ct. App. 1997).

> MS. HYDE: Your Honor, for the record, we object to a continuance. We agreed to one before, and it was fairly substantial because of the concerns about Fifth Amendment privilege in a pending trial, but we specifically reserve the right to go forward today. If there's some reason Mr. Maese continued that jury trial, which is, in fact, what happened, and it's now pending. We're prepared to go forward, Judge.[7]

Curtis cites Ms. Hyde's argument for the proposition that Maese previously requested a continuance. Yet the record fails to show this. As Maese stated in his Brief, the parties stipulated to a continuance. Curtis concedes that "The docket suggests that the continuances were stipulated to by counsel."[8] Therefore this prong of the *Longcrier* test weighs towards Maese.

B. Curtis concedes that inconvenience was not a factor.

Ms. Curtis argues that she was inconvenienced because the hearing was held months after she filed her injunction and not days. This argument is meritless for two reasons.

First, Utah Code contemplates a 10-day time frame for an expedited stalking injunction hearing for the benefit of the Respondent, not the Petitioner. This is revealed by the code which requires hearings after the initial 10-day expedited hearing deadline. In relevant part the code states:

> If the respondent requests a hearing after the ten-day period after service, the court shall set a hearing within a reasonable time from the date requested....[9]

---

[6] Brief of Appellee at 15-16.

[7] R. at 331A (Tr. 4:19-25, March 6, 2009).

[8] Brief of Appellee at 16.

[9] Utah Code Ann. § 77-3a-101(10).

Under Utah law, Maese could have requested a hearing at anytime. Accordingly, the 10-day expedited time frame had been previously waived by Maese.

Second, and more importantly, Ms. Curtis enjoyed the protection of the stalking injunction during any continuance. She was unprejudiced.

Finally, Curtis states that a further continuance would inconvenience the court. She states this without citing any authority. The Court cannot be prejudiced; only litigants can be inconvenienced. Otherwise, the Court is *constantly* inconvenienced.

This factor weighs in Maese's favor.

C. Maese's request was legitimate. Moreover, Ms. Curtis severely misstates the record and extrapolates erroneous conclusions.

Curtis claims that "Mr. Athay's withdrawal could not have been spontaneous because both Maese and Mr. Athay stated that Maese had spoken to a different attorney about representation in this case."[10] Curtis has reached a spurious conclusion.

Indisputably, Maese was looking for a different attorney. Yet after failing to find a replacement, Maese expected Mr. Athay to show up to court that day and put on a defense. Mr. Athay failed to do that and nothing in the record shows that Mr. Athay told Maese, "Hey, if you don't like my mootness defense, I'm going to withdraw." Prior to that morning, Mr. Athay never told Maese he was withdrawing.

Instead, Mr. Athay unilaterally withdrew because Maese insisted he develop a defense on the merits; to actually work on the case for which he had been retained.

Mr. Athay's withdrawal was spontaneous and his withdrawal was a legitimate reason to continue the hearing. This factor weighs in Maese's favor.

---

[10] Brief of Appellee at 16.

D. Maese did not contribute to Mr. Athay's request to withdraw.

Curtis argues, "Mr. Athay stated that part of the breakdown was because he would not comply with some of Maese's demands" and therefore Maese contributed to the need for a continuance. Yet as the record demonstrates, Mr. Athay wanted to fight the stalking injunction on mootness grounds alone. His eggs were in one basket. Maese asked him to also prepare a meritorious defense. Asking for an ethical, meritorious defense—including documents and witnesses—cannot contribute to a continuance. Moreover, Curtis fails to cite authority for her proposition. This factor weighs in Maese's favor.

E. Maese was prejudiced by the denial of a continuance.

1. *The failures cited by Curtis – lack of witnesses and lack of preparation – relate to Maese's representation, the cause of the continuance. Therefore Maese's prejudice is self evident.*

Curtis states that Maese failed to call any witnesses on his behalf. Maese agrees. This is the crux of Maese's case on appeal. Maese asked his attorney to prepare a meritorious defense, he did not.

Incredulously, Curtis points out that Maese was incarcerated[11] and then says that he was responsible to confer with his attorney;[12] that he had time to prepare yet squandered it.[13] Logic and common sense tell us that when someone is incarcerated, he is at his attorney's mercy. He cannot simply make an appointment with a secretary. Also, he cannot prepare to defend against litigation without resources. In jail, even paper and pencils are rationed.

---

[11] Brief of Appellee at 5.

[12] *Id.* at 17.

[13] *Ibid.*

Maese did not fail to confer with his attorney, or fail to prepare for his case, or fail to call witnesses. Maese was restrained from doing so, and the person whom he enlisted for help—Mr. Athay—did not help him.

2. *The lack of witnesses prejudiced Maese.*

Although Maese sees how his brief may have been unclear, witnesses on his behalf would have shown his conduct was *commensurate* with exercising a constitutionally protected right to investigate witnesses against him.

Witnesses would have also shown Curtis never *expressed* that she felt fear until after she filed the stalking injunction. Her fear was found only after she discovered a way to exploit it. Moreover, Maese asked his attorney to compel Curtis to comply with the trial court's order. He failed to, and Curtis escaped discovery.

These are all prejudicial factors. The Court cannot ignore a truism: If things are not the same, they are different.

A trial court may choose to ignore all the evidence in front of it. In that case a litigant can appeal on clearly erroneous facts. Here, Maese did not have that option because he was unable to present an adequate defense to the allegations against him.

This Court cannot ignore the prejudice incurred by a lack of witnesses. More importantly, a trial court could not ignore the weight of properly admitted evidence. If Maese had proper representation, he would have admitted evidence proving he did not stalk Curtis which would have resulted in a more favorable outcome.

3. *Maese is not an attorney and certainly not a* trial *attorney.*

Curtis asserts that because Maese performed some lawyer-like functions, his *pro se* status is not prejudicial. This is a poor proof. A thought experiment: If you were forced to

land a plane in a field without ever having piloted one—resulting in a catastrophic crash—would you conclude that a qualified pilot is unnecessary? Of course not.

Maese performed only those legal functions that relate to literacy. Yet reading and writing are poor substitutes for trial counsel; which is why Maese retained one. Despite this, counsel withdrew. Curtis's claim—that Maese's best efforts equate to counsel at trial—is made without any citation to authority and is logically deficient.

* * *

Maese satisfies all five prongs of the *Longcrier* test. Curtis claims that "no other witness testimony could have altered the trial court's decision."[14] Her claim is, don't bother the trial court with facts, it's made up its mind.

Maese claimed—and maintains—that despite being in close proximity to Curtis on two occasions, he did not stalk her. His witnesses would have proved that in at least one instance, he was working in concert with a licensed private investigator and on the other occasion, Curtis felt no fear. Where Curtis alleged only two predicate incidents, the minimum under the statute, Maese needed to negate only one to prevail.

A properly granted continuance would have given Maese a favorable outcome.

POINT II. Rule 74(c) requires an appear or appoint notice regardless of a litigant's presence. Curtis ignores the plain language of the rule.

Curtis fundamentally misunderstands Maese's syllogism here. It is as follows—The major premise is: Under Utah law, where a complete breakdown in communication or an irreconcilable conflict exists, a trial court must permit a substitution of counsel.[15] The

---

[14] Brief of Appellee at 20.

[15] *State v. Lovell*, 1999 UT 40, ¶ 31, 984 P.2d 382.

minor premise is: Maese's counsel declared in open court that a breakdown in communication between him and his client occurred;[16] Curtis concedes this happened.[17] The conclusion is: Utah law required the trial court to grant Mr. Athay's withdrawal.

Based on that conclusion, the trial court should have granted Mr. Athay's motion and then required Curtis to comply with the Rules of Civil Procedure. Including Rule 74(c)'s appear or appoint notice requirement. Instead, the trial court gave Maese a choice; proceed with counsel or proceed *pro se*, a false dichotomy. Under Utah law, the first choice is void. Therefore the real choice the trial court gave to Maese was, proceed *pro se* or concede the injunction. In other words, the trial court compelled Maese to represent himself against his will and his better judgment.

Yet Curtis claims that this Court holds "that it is unnecessary to give an unrepresented party written notice under Rule 74(c) if he already had notice."[18] She cites *Elsbury v. Elsbury* for this proposition.[19] Her interpretation is impermissibly liberal.

In *Elsbury v. Elsbury*, Mr. Elsbury filed a substitution of counsel that read, "[Cory Elsbury] hereby substitutes himself as counsel replacing Marsha M. Lang, effective the date of her withdrawal of Counsel."[20] Based on that submission, this Court held "Because Mr. Elsbury appeared on March 23, 2000, it was not necessary for Ms. Elsbury's

---

[16] R. at 331A (Tr. 3:15-25, March 6, 2009.)

[17] Brief of Appellee at 24.

[18] *Id.* at 21.

[19] *Elsbury v. Elsbury*, 2001 UT App 217.

[20] *Id.* at ¶2.

counsel to give him notice or for the proceedings to be halted."[21] The key ruling from this holding is that after *voluntarily* appearing, a litigant may not claim prejudice.

In this case, the trial court gave Maese an impossible choice. After his counsel moved to withdraw, the Court asked Maese to choose between proceeding *pro se* or continue with counsel that had disavowed meritorious defenses.

Instead of choosing between two bad options, Maese asked for time. He then conceded Mr. Athay's motion. Maese never made a formal appearance; he never substituted himself for counsel. *Elsbury* is inapposite to this case.

1. *The trial court cannot give litigants impossible choices. Here, Curtis concedes that Maese's counsel was entitled to withdraw. Given that, the trial court gave Maese only one choice: proceed* pro se.

At the motion for new trial hearing, the trial court stated that:

> What the *Laporto* case says that's cited by Maese is that I could have required the hearing to go forward and required Mr. Athay to continue to represent Maese. If I can do that, I can certainly give Maese the option of either exercising either going forward with Mr. Athay or representing himself…[22]

Inherent in the trial court's ruling is that if it allowed Maese to represent himself, it could waive Rule 74(c)'s appear or appoint notice requirement. It cannot. Curtis is correct when she states that Rule 74(c) "dictates the procedure for after an attorney withdraws."[23] The procedure requires the opposing party to serve an appear or appoint notice on the party whose attorney has withdrawn. Here, that did not happen.

The trial court's ruling effective compelled Maese to represent himself, *pro se*.

---

[21] *Id.* at ¶5.

[22] R. at 349 (Tr. 5:3-9, May 5, 2009).

[23] Brief of Appellee at 23.

2. *Counsel withdrew because he had not prepared a meritorious defense. He then declared his ineffectiveness.*

Curtis continues to distort the record and states Maese's "Counsel withdrew because he would not file motions Maese wanted him to file." As argued above, Mr. Athay relied solely on a mootness argument to defeat the stalking injunction, forsaking meritorious defenses. He then stated:

> I do not believe I can effectively and adequately represent Maese in this matter, and I think he would agree with that.[24]

His monologue was an amalgamation of why he should withdraw from the case. For Curtis to state that Mr. Athay withdrew simply because Maese wanted him to file motion and he did not, is insincere.

3. *The trial court's ruling on the Rule 74(c) issue is clear.*

As argued above, the trial court ruled on Maese's Rule 74(c) issue on the merits. When challenged by Maese, the trial court explicitly stated "My actions in this case were completely consistent with Rule 74."[25] That statement shows: The trial court heard Maese's argument; it evaluated it on the merits; and it concluded Maese was wrong. While the Court made no lengthy findings of facts or conclusions of law, it nonetheless found that its actions were congruent with Utah law. A meritorious ruling.

POINT III. On Appeal, Maese has not argued a constitutional right to counsel in a civil stalking injunction.

Curtis argues a point in her brief not made by Maese. Maese asks that this portion of her brief be stricken as moot and superfluous.

---

[24] R. at 331A (Tr. 3:24-4:1, March 6, 2009).

[25] R. at 349 (Tr. 5:2-3, May 5, 2009).

POINT IV. Attorneys' fees are inappropriate here.

Curtis claims this appeal is "merely a continuation of Maese's pattern of harassment against Ms. Curtis."[26] And that "The arguments made by Maese were simply meant to further harass Ms. Curtis."[27]

Unlike Curtis's brief, Maese's briefs focus on the law and relevant facts applied to the law—without personal attacks. Moreover, the Court previously withdrew its *sua sponte* motion for summary disposition. It saw a claim meritorious enough to deserve plenary presentation. That alone demonstrates a genuine issue of law remains in question and fees are inappropriate.

CONCLUSION

WHEREFORE, Mr. Maese respectfully requests this Court reverse the trial court's entry of judgment and permit Mr. Maese time to retain new counsel.

RESPECTFULLY SUBMITTED on this 11th day of February, 2010.

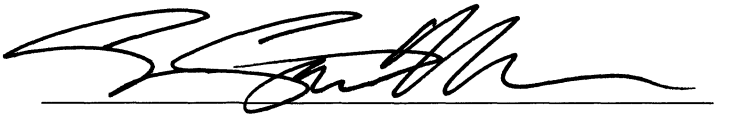
S. Steven Maese
Appellant Pro Se

CERTIFICATE *of* SERVICE

This is to certify that on the 11th day of February, 2010, two true and correct copies of the foregoing were served by the method indicated below, and addressed to:

Rebecca Skordas
341 South Main St., Suite 303
Salt Lake City, Utah 84111

☐ Hand Delivery
☒ U.S. Mail
☐ Overnight Mail



[26] Brief of Appellee at 30.

[27] *Id.* At 31.